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No. 83-2165

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

PAMELA D. JONES AND JENNIFER L. DODGE,
individually and on behalf of all
other persons similarly situated,
PETITIONERS,

vs.

MICHAEL PETIT, COMMISSIONER
Maine Department of Human Services
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION

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TABLE OF CONTENTS

Page

Table of Authorities ii

Statement of the Case 1

Reasons for Denying the Writ 3

Conclusion 8

Affidavit of Service 9

TABLE OF AUTHORITIES

CASES — Page

Edelman v. Jordan, 415 U.S. 651 (1974) 6

Jones v. Petit, 473 A.2d 879 (Me. 1984) 2, 3, 7

Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387 (1923) 5

Phillips v. Noot, 728 F.2d 1175 (8th Cir. 1984) 3, 5, 7

Quern v. Jordan, 440 U.S. 332 (1979) 6

Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70 (1955) 3

STATUTES

P.L. 97-35, 95 Stat. 357, Omnibus Budget Reconciliation Act of 1981 ..... passim

P.L. 98-369, 98 Stat. 494, Deficit Reduction Act of 1984 ..... 3, 4, 5

42 U.S.C. §1396a(e)(1) 2, 4, 5

REPORTS AND RULES

H.R. Rep. No. 861, 98th Cong., 2d Sess. 1393 ..... 5, 6

Sup. Ct. R. 17 3

Me. R. Civ. P. 76A 7, 8

STATEMENT OF THE CASE

This case was filed in the Superior Court of Kennebec County in Maine on behalf of a class of Maine aid to families with dependent children (AFDC) recipients who became ineligible for cash benefits following implementation in January, 1982 of federal AFDC program changes required by the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, 95 Stat. 357 (hereinafter "OBRA"). Among the OBRA changes were the addition of a gross income test for eligibility and a reduction in the proportion of earned income that could be disregarded in determining whether applicants or recipients met AFDC financial eligibility guidelines. The petitioners became ineligible for AFDC because of increases in their "countable income"[1] resulting from their inability to meet the gross income test.[2] Having lost their AFDC eligibility, the petitioners also lost the automatic medicaid coverage

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[1]Although the phrase countable income is not defined in AFDC statutes or regulations, it is a term used by program administrators and participants to describe family income remaining after all appropriate disregards have been applied.

[2]The Maine Supreme Judicial Court, in the case that the petitioners seek to have reviewed, describes the effect of OBRA on AFDC eligibility and the named plaintiffs:

> Under the previous formula for determining AFDC eligibility, a prospective recipient's gross income was reduced by various deductions and disregards to reach countable income. The countable income was then

that accompanies AFDC. They contend that their loss of AFDC because of increased countable income was a loss "because of increased hours of, or increased income from, employment," as described in 42 U.S.C. §1396a(e)(1). They therefore contend that they were entitled to automatic medicaid coverage under that statute for four months after they became ineligible for AFDC. The respondent Maine Department of Human Services ("Department") argued successfully before the Supreme Judicial Court of Maine in *Jones v. Petit*, 473 A.2d 879 (Me. 1984), that that section applies only to those who lose AFDC eligibility because their actual income rather than their countable income has increased, and that the class therefore was not eligible for the additional medicaid coverage. The parties' divergent views stem from a disagreement about statutory construction.

> compared to a state payment standard and, if it fell below that standard, the claimant would be entitled to benefits. Under OBRA, a claimant's gross income is first set against a standard of need established for a family of the claimant's size, as a threshold test. If the income exceeds 150% of that standard, then AFDC eligibility is denied without any further inquiry as to the claimant's countable income.
>
> Both plaintiffs in this case qualified for AFDC benefits under the previous formula, but failed to meet the threshold test established by OBRA. [footnotes omitted.]

Jones v. Petit, 473 A.2d 879, 881 (Me. 1984).

REASONS FOR DENYING THE WRIT

1. There are no special and important reasons for granting a writ of certiorari in this case.

The petitioners argue that this Court should exercise its jurisdiction to hear this case because of a conflict between an Eighth Circuit decision, *Phillips v. Noot*, 728 F.2d 1175 (8th Cir. 1984), holding that people who lost AFDC because of OBRA changes were entitled to four additional months of medicaid coverage, and the decision in *Jones v. Petit*, 473 A.2d 879 (Me. 1984), holding that they were not. This Court has said that it may grant a review on writ of certiorari when there is such a conflict, but only when there are also "special and important reasons" calling for a review. Sup. Ct. R. 17. "'Special and important reasons' imply a reach to a problem beyond the academic or episodic." *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74 (1955). This petition raises an episodic problem because the resolution of the statutory interpretation question that is presented here will only affect the historical class of people who were receiving AFDC in 1982 and whose eligibility was affected by OBRA. Therefore, the respondent urges this court not to exercise its discretion to hear this case under Rule 17.

The petitioners suggest that the problem raised by OBRA is not episodic because, with an increasing federal deficit, Congress may further restrict eligibility for AFDC in the future. They suggest that the further restrictions will again give rise to the question of entitlement to four additional months of medicaid coverage. In fact, however, recent federal legislation known as the Deficit Reduction

Act of 1984, P.L. 98-369, 98 Stat. 494 (hereinafter "DEFRA"), which changes among other things treatment of AFDC disregards, shows that the problem of statutory construction posed here derives from an episode that is unlikely to recur.

Specifically, the AFDC changes in DEFRA show that Congress has recognized the confusion caused by the OBRA change in countable income determinations and has dealt with that confusion by providing a safeguard in subsequent changes to avoid similar problems. In sections 2623 and 2624 of DEFRA, Congress avoided problems with the four month automatic medicaid provision by adjusting extended medicaid coverage in conjunction with a legislative change concerning countable income. Section 2624 expressly provides that certain families who become ineligible for AFDC because of the changes in the "thirty and a third disregard"[3] set out in section 2623 will continue to receive medicaid automatically for at least nine months. This specific nine month extension of medicaid coverage circumvents any problems with the four month extension under 42 U.S.C. §1396a(e)(1) similar to those that OBRA's change in countable income created. Congress' recognition in section 2624 of the difficulties with interpreting 42 U.S.C. §1396a(e)(1) following statutory changes in countable income calcula-

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[3]The "thirty and a third" disregard reduces countable income by $30 plus one-third of the AFDC applicant or recipient's income after all other disregards have been taken. DEFRA revises the method for determining the duration of both the flat $30 disregard and the one-third disregard.

tions is strong evidence that the issue will not arise in future AFDC reforms.[4] Congress having demonstrated its awareness in 1984 of the medicaid problems created by statutory changes in AFDC income calculations, there is no reason to assume that it will not continue to address those problems in any future legislation that may result from efforts to reduce the federal deficit.

2. Public interest is not a reason for granting a writ of certiorari in this case.

Reasons for granting a writ of certiorari may also include a consideration of the importance of the issues to the public as well as to the parties. *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923). The petitioners argue that the public interest in a uniform medicaid program requires that the conflict between Maine's statutory interpretation and that of the Eighth Circuit in *Phillips v. Noot*, 728 F.2d 1175 (8th Cir. 1984),

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[4]In addition, the Conference Report accompanying DEFRA provides a clear indication of Congress' understanding that 42 U.S.C. §1396a(e)(1) applies only to changes in actual income and not in countable income. The Conference Report's description of the post-OBRA and pre-DEFRA law says that

> [c]ategorical Medicaid eligibility is retained after the loss of AFDC eligibility [by reason of OBRA's four month limit on the thirty and a third disregard] only in the case of families whose earnings increase to the point that they would be ineligible even if the $30 plus one-third disregard were applied. These families are eligible for Medicaid for four additional months.

(footnote 4 continued on next page.)

be resolved. As noted above, however, Congress seems to be aware of conflicting interpretations resulting from OBRA and has taken steps to resolve the problems or to prevent such conflicts from arising again. That awareness indicates that the problem created by OBRA is unlikely to recur and lessens the public's interest in resolving in the courts the issue raised here.

The public interest in the resolution of the case at bar may also be considered through an examination of the interest of the parties. That interest, though not to be minimized, has diminished as the impact of OBRA recedes, because the class affected by this suit includes only those whose AFDC eligibility ended as a result of OBRA changes and not as a result of any subsequent changes that may have affected countable income. The relief available to the class in light of the Eleventh Amendment principles enunciated in *Edelman v. Jordan*, 415 U.S. 651 (1974), and *Quern v. Jordan*, 440 U.S. 332 (1979), appears limited to notice to class members that they may have been eligible for four months of automatic medicaid coverage following closure of their AFDC grants sometime early in 1982. The effectiveness of such a notice is doubtful in light of the unlikelihood that the Department has current addresses for class members or

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(footnote 4 continued from previous page.)

H.R. Rep. No. 861, 98th Cong., 2d Sess. 1393. The Conference Committee's description shows its understanding that the four month automatic extension of medicaid is available only if AFDC ineligibility results from increased earnings rather than from increased countable income.

can reach them through publication, and the unlikelihood that any class members who may be located have kept adequate records of medical expenditures made in the four months after their AFDC eligibility ended to enable the Department to make medical payments. It is also probable that some class members received medicaid coverage after their AFDC eligibility ended through Maine's medically needy medicaid program, which provides medicaid to certain families whose income exceeds AFDC financial eligibility guidelines after those families have incurred medical expenses in an amount proportionate to their income. Thus, the importance of this case is further eroded.

3. This Court should not exercise its discretion to grant certiorari where the petitioners failed to pursue an appropriate state court remedy.

Phillips v. Noot, 728 F.2d 1175 (8th Cir. 1984), was decided on March 12, 1984. The Maine Supreme Judicial Court, sitting as the Law Court, decided the case at bar more than three weeks later on April 5, 1984. It is apparent from the decision in *Jones v. Petit*, 473 A.2d 879 (Me. 1984), that the Law Court was unaware of the earlier Eighth Circuit case at the time of its decision. The result is a conflict between the decision of the Eighth Circuit and the decision of Maine's highest court.

That conflict might have been resolved had the petitioners taken corrective action in front of the Maine Supreme Judicial Court. Maine Rule of Civil Procedure 76A provides that no mandate shall issue until fourteen days after the date of a Law Court decision. Within that

time, a dissatisfied party may file a motion for reconsideration. Under Rule 76A, the court's apparent willingness to accept within fourteen days after decision motions for reconsideration that are not frivolous or repetitive indicates that the petitioners had over five weeks in which to bring the conflicting Eighth Circuit opinion to the court's attention. Having failed to request a timely reconsideration, the petitioners should not now be granted an opportunity to reargue their case before the Supreme Court of the United States.

CONCLUSION

For reasons discussed above, the respondent respectfully requests that the petition for a writ of certiorari be denied.

DATED: October 4, 1984

/s/ Katherine Greason

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AFFIDAVIT OF SERVICE

I, Katherine Greason, being duly sworn, depose and say that this document was timely filed and served:

Forty copies were mailed by being deposited at the United States post office in Augusta, Maine with first-class postage prepaid on this 4th day of October, 1984, addressed to Office of the Clerk, Supreme Court of the United States, Washington, D.C. 20543;

Three copies were similarly mailed addressed to Robert E. Mittel, Mittel and Hefferman, 5 Milk Street, P.O. Box 428, Portland, Maine 04112.

Dated: October 4, 1984

/s/ Katherine Greason

KATHERINE GREASON
Assistant Attorney General

Subscribed and sworn to before me this 4th day of October, 1984.

NOTARY PUBLIC

My commission expires: